MOTION FILED
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No. 88-1972

In The
Supreme Court of the United States
October Term, 1989

STATE OF ILLINOIS,
Petitioner,

--against--

LLOYD PERKINS,
Respondent.

ON WRIT OF CERTIORARI
TO THE ILLINOIS APPELLATE COURT,
FIFTH DISTRICT

MOTION TO FILE BRIEF AND BRIEF AMICI CURIAE OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., JOINED BY THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC., THE NATIONAL DISTRICT ATTORNEYS ASSOCIATION, INC., THE NATIONAL SHERIFFS' ASSOCIATION, AND THE ILLINOIS ASSOCIATION OF CHIEFS OF POLICE, IN SUPPORT OF THE PETITIONER.

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Come now Americans for Effective Law Enforcement, Inc., et al., and move this Court for leave to file the attached brief as *amici curiae,* and declare as follows:

1. *Identity and Interest of Amici Curiae.* The *amici curiae* are described as follows:

Americans for Effective Law Enforcement, Inc. (AELE), as a national not-for-profit citizens organization, is interested in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties and property, within the framework of the various State and Federal Constitutions.

AELE has previously appeared as *amicus curiae* over eighty times in the Supreme Court of the United States, and over thirty-six times in other courts, including the Federal District Courts, the Circuit Courts of Appeal and various state courts, such as the Supreme Courts of California, Illinois, Ohio and Missouri.

The International Association of Chiefs of Police, Inc. (IACP), is the largest organization of police executives and line officers in the world, consisting of more than 14,000 members in 72 nations. Through its programs of training, publications, legislative reform and *amicus curiae* advocacy, it seeks to make the delivery of vital police services more effective, while at the same time protecting the rights of all our citizens.

The National District Attorneys Association, Inc. (NDAA), is a nonprofit corporation and the sole national organization representing state and local prosecuting attorneys in America. Since its founding in 1950, NDAA's programs of education, training, publication, and *amicus curiae* activity have carried out its guiding

purpose of reforming the criminal justice system for the benefit of all of our citizens.

The National Sheriffs' Association (NSA), is the largest organization of sheriffs and jail administrators in America, consisting of over 40,000 members. It conducts programs of training, publications, and related educational efforts to raise the standard of professionalism among the Nation's sheriffs and jail administrators. While it is interested in the effective administration of justice in America, it strives to achieve this while respecting the rights guaranteed to all under the Constitution.

The Illinois Association of Chiefs of Police (ILLACP), represents law enforcement executives and administrators in the State of Illinois. It actively engages in training programs and publications for Illinois law enforcement officers, as well as *amicus curiae* advocacy in cases critical to law enforcement interests in the State.

2. *Desirability of an Amici Curiae Brief. Amici* are professional associations representing the interests of law enforcement agencies at the state and local levels. Our members include: (1) law enforcement officers and law enforcement administrators who are charged with the responsibility of conducting interrogations of suspects within the bounds of the law, and (2) prosecutors, county counsel and police legal advisors who, in their criminal jurisdiction capacity, are called upon to advise law enforcement officers and administrators in connection with such matters and to prosecute cases involving evidence obtained thereby.

Because of the relationship with our members, and the composition of our membership and directors -- including active law enforcement administrators and counsel -- we possess direct knowledge of the impact of

the ruling of the court below, and we wish to impart that knowledge to this Court. We respectfully ask this Court to consider this information in reaching its decision in this case.

3. *Reasons for Believing that Existing Briefs May Not Present All Issues.* AELE, IACP, NDAA, NSA, and ILLACP are state and national associations, and their perspective is broad. This brief concentrates on policy issues, including the values served by the adoption of reasonable rules for guiding police conduct in the law of interrogation. Although Petitioner is clearly represented by capable and diligent counsel, no single party can completely develop all relevant views of such issues as these.

4. *Avoidance of Duplication.* Counsel for *amici curiae* has reviewed the facts of this case and has conferred at length with counsel for Petitioner in an effort to avoid unnecessary duplication. It is believed that this brief presents issues that are not otherwise raised.

5. *Consent of Parties or Requests Therefor.* Counsel has requested consent of the parties. The consent of Petitioner has been received and filed with the clerk of this Court. This Motion is necessary because the Respondent has not as of the time of printing of the Brief granted consent to *amici* in writing. Should it be received thereafter, it will be filed by counsel with the clerk of this Court with a request that this motion be withdrawn and the brief be deemed filed with the consent of all parties.

For these reasons, the *amici curiae* request that they be granted leave to file the attached *amici curiae* brief.

Respectfully submitted,

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INTEREST OF AMICI

See Section on Identity and Interest of *Amici Curiae, supra.*

STATEMENT

A prison inmate, serving a six year term for burglary, revealed to the police that he had information regarding a homicide. His stated motivation was his feeling that "people should not kill people." The facts he revealed coincided closely with the case facts already known to the police, so his information was considered reliable.

The named individual, subsequently the Respondent in the instant case (hereinafter referred to as defendant), was located in a county jail. An undercover police officer and the informant were placed in a cell block with him. The informant introduced the officer as a fellow escapee from a correctional institution. They also posed as being under arrest for burglary. Soon all three were conversing as to how to escape from their present confinement, but they postponed discussion of the details until the other inmates had gone to sleep. At that meeting the officer/prisoner asked the defendant whether he had ever "done someone," whereupon the defendant related in detail the murder he had committed. The next

morning the defendant was taken to court and charged with the crime.

Obviously, no warnings had been given to the defendant prior to his incriminating statements. As a consequence, the trial court granted a suppression motion, on the ground that the informant and the police officer/prisoner were agents of the state and that fact, plus the custodial situation, required the issuance of the warnings prescribed in *Miranda v. Arizona,* 384 U.S. 436 (1966).

The trial court's suppression order was sustained on appeal. *People v. Perkins,* 176 Ill. App. 3d 443, 531 N.E.2d 141, 126 Ill. Dec. 8 (5th Dist. 1988).

ARGUMENT

DEFENDANT WAS NOT SUBJECTED TO CUSTODIAL INTERROGATION FOR PURPOSES OF *MIRANDA v. ARIZONA* WHEN AN UNDERCOVER AGENT, POSING AS AN ARRESTEE, ASKED HIM WHETHER HE HAD EVER "DONE SOMEONE" [KILLED SOMEONE] WHILE DEFENDANT WAS BEING HELD ON AN UNRELATED CHARGE; FAILURE OF THE AGENT TO WARN DEFENDANT OF HIS RIGHTS UNDER *MIRANDA* DOES NOT REQUIRE SUPPRESSION OF DEFENDANT'S STATEMENTS.

I.

No better analysis and presentation of the core issue in the present case can be offered than that which appears in a 1978 law review article by Professor Yale Kamisar of the University of Michigan Law School. It carries the title "Brewer v. Williams, Massiah, and Miranda: What Is Interrogation and When Does it

Matter?," and was published in the Georgetown Law Journal (Vol. 67, No. 1, 1-101). Following are its relevant portions as they appear in the text, at pages 63-64, but with omission of the footnotes:

> ...It is the impact on the suspect's mind of the *interplay* between police interrogation and police custody--each condition *reinforcing* the pressures and anxieties produced by the other--that, as the *Miranda* Court correctly discerned, makes "custodial police interrogation" so devastating. It is the suspect's realization that the *same persons* who have cut him off from the outside world, and have him in their power and control, want him to confess, and are determined to get him to do so, that makes the "interrogation" more menacing than it would be without the custody and the "custody" more intimidating than it would be without the interrogation.
>
> It is this *combination* of "custody" and "interrogation" that creates--and, in the absence of "adequate protective devices," enables the police to exploit--an "*interrogation* environment" designed to "subjugate the individual to the will of his examiner." It is this *combination*--more awesome, because of the interplay, than the mere sum of the "custody" and "interrogation" components--that produces the "interrogation atmosphere," "*interrogation* ... in a *police dominated* atmosphere" that "carries its own badge of intimidation," that "exacts a heavy toll in individual liberty and trades on the weakness of individuals," and that is so "at odds" with the privilege against compelled self-incrimination.
>
> In the "jail plant" or other "undercover"

situations, however, there is no *integration* of "custody" and "interrogation," no *interplay* between the two, at least none where it counts--in the suspect's mind. So far as the suspect is aware, he is not "surrounded by antagonistic forces"; "[t]he presence of an attorney, and the warnings delivered to the individual" are not needed to "enable [him] under otherwise compelling circumstances to tell his story without fear, effectively, and in a way that eliminates the evils in the interrogation process." He simply is not in the "compelling circumstances" that require *Miranda* warnings to be given; he is not being subjected to the "interrogation process."

So far as the suspect is aware, his fellow prisoner neither controls his fate nor has a professional interest in his case. So far as the suspect is aware, his fellow prisoner does not care whether he confesses, and thus has little cause to become abusive by trying to "bully" him if he does not. Moreover, even if the fellow prisoner did care, and cared a great deal, there is no reason to think that he possesses the power over the suspect or the necessary skills and training to press demands and to weary the suspect with contradictions of his assertions until the case "is brought to a definite conclusion."

A fellow prisoner may, of course, communicate his determination to get answers to his questions by wielding a knife or clenching his fist, but that is a different case. There is nothing *inherently* compelling about talking with, or being talked to by, a prisoner in the same or an adjoining cell. For the suspect thinks he is dealing with *an equal,* not with his captors.

Amici fully concur with the statements of Professor Kamisar, who, as the Court may well know, has been a staunch supporter of the mandate of *Miranda v. Arizona.* That fact warrants attention when consideration is given to his views as expressed in the foregoing quotations from his article.

II

The fact that the informant was accompanied by an undercover officer does not in any way diminish the applicability of Professor Kamisar's analysis to the present case. Moreover, he specifically states elsewhere in his article, at page 65, that "whatever may lurk in the heart or mind of the fellow prisoner (or apparent friend or colleague), if it is not 'custodial police interrogation' in the *eye of the beholder,* then it is not such interrogation within the meaning of *Miranda.*"

III

The use of informants in the police function is an absolute necessity. Many serious crimes would remain unsolved but for informant involvement. Then, too, we should not treat lightly the admonition of the informant in this case that "people should not kill people." To sustain the Illinois Appellate Court's ruling would offer no encouragement to the application of that principle.

Amici urge this Court to reverse the decision of the lower court. In doing so there will be a correction of the misunderstanding of *Miranda* not only by the Illinois court but also by the courts of Nevada, Nebraska, and Rhode Island, whose decisions were cited and discussed in the opinion of the court below.

CONCLUSION

Once again evidence has been presented of the adverse impact of *Miranda v. Arizona* on trial courts and many appellate courts which should be spared the diversion of their primary responsibility of making reasonably possible the conviction of the guilty and affording adequate protection to the *innocent.* Overzealousness in implementing the prophylactic rules of *Miranda,* as in the present case, should be discouraged by this Court. Beyond that, we respectfully suggest that there be an elimination of the confusion and needless expenditure of trial and appellate court time and effort by overruling *Miranda,* either in this case or in some other one at the earliest opportunity. For a survey and discussion in support of that suggestion, see Inbau and Manak, "Miranda v. Arizona--Is It Worth the Cost?," 24 Cal. West. L. Rev. 185-200 (1988).

Respectfully submitted,

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